

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
RADAKOVICH CONSTRUCTION COMPANY,)
)
Appellant,)
)
v.)
)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
)
Respondent.)

PCHB No. 81-11

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250 civil penalty for outdoor burning allegedly in violation of Section 400-035 of respondent's General Regulations for Air Pollution Sources came on for hearing before the Pollution Control Hearings Board, Nat W. Washington, presiding, and Gayle Rothrock, at Longview, Washington on April 10, 1981.

Appellant appeared by its president, Archie Radakovich; respondent appeared by its attorney, James D. Ladley. Court reporter Carolyn M. Koinzan recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were examined. From
2 testimony heard and exhibits examined, the Pollution Control Hearings
3 Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
7 a certified copy of its General Regulations for Air Pollution Sources
8 containing respondent's regulations and amendments thereto.

9 II

10 The appellant was charged with permitting and maintaining an open
11 fire in violation of Section 400-035, of the General Regulations for
12 Air Pollution Sources, of the Southwest Air Pollution Control
13 Authority, on or about January 5, 1981 at 2:33 p.m., at 2361 East
14 Lynnwood Drive, Longview, Washington as stated in Field Notice of
15 Violation number 4762.

16 III

17 The following are pertinent portions of Section 400-035 of the
18 General Regulations:

19 No person shall ignite, cause to be ignited, permit
20 to be ignited, or suffer, allow, or maintain any open
21 fire within the jurisdiction of the Authority,...in
22 this Regulation.

23 . . .

24 (4) It shall be (prima facie) evidence that the
25 person who owns or controls property on which an open
26 fire, prohibited by this regulation, occurs has
27 caused or allowed said open fire.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

IV

On January 5, 1981, at about 2:30 p.m., Thomas C. Tabor, an air quality control specialist for respondent investigated an outdoor fire near a slough in the vicinity of the South Mt. Solo solid waste disposal site at 2361 E. Lynnwood Drive near Longview, in Cowlitz County operated by appellant. He saw a burning smoking fire which he assumed was on property belonging to appellant. The material in the fire consisted of lumber, some of which was painted. Although he did not notice any plastic or other petroleum based products in the fire he did notice a strong odor which is characteristic of burning petroleum based products. He testified that the pile was about 20' in diameter and about 6' high, and that the flames were rising about 2 feet above the pile. He noticed caterpillar tracks around most of the pile and it appeared to him to be a pile which had been deliberately pushed together for the purpose of burning. He issued a notice of violation charging appellant with a violation of Section 400-035 of respondent's General Regulations. He delivered a copy to Bob Radakovich, an officer of appellant company, who was on duty at appellant's nearby solid waste disposal site.

Archie Radakovich, president of appellant, testified that he had received word from a neighbor, Henry J. Morrison on Sunday January 4, 1981, that a fire was burning near the slough, that he went to where it was and attempted, as a public service, to put it out with a large Caterpillar tractor, but was unsuccessful, because it kept getting stuck in the mud. He testified that by using a smaller tractor he was

1 able to put the fire out on the afternoon of Monday, January 5th. He
2 denied that appellant was in any way responsible for the fire. He
3 blamed the fire on duck hunters. Mr. Morrison testified that on
4 Sunday, January 4, he saw Mr. Radakovich attempting to put the fire
5 out with a Caterpillar tractor.

6 V

7 A major point of contention was the location of the fire, and
8 whether it was on property under the ownership and control of
9 appellant.

10 Respondent's witnesses, Thomas Tabor and David Moore, both
11 testified that the fire was about 3/8 of a mile (1980 feet) westerly
12 of the Mt. Solo Road. Using Exhibit R-1, they both located the fire
13 in the area marked with an "X" and the words "burn site." On the map
14 the "X" is located 2-1/4 inches westerly of point "A" on Mt. Solo
15 Road. Exhibit R-1 is a photocopy of a map in the office of the county
16 assessor which was introduced by respondent for the purpose of showing
17 land ownership in the vicinity of appellant's solid waste disposal
18 site. Mr. Moore testified that the scale of the map is 1 inch equals
19 400 hundred feet. Using this scale the site of the fire as located by
20 Mr. Tabor and Mr. Moore is only about 900 feet from Mt. Solo Road.
21 The map shows that the appellant company owns the land at the site Mr.
22 Tabor and Mr. Moore identified as the location of the fire.

23 Appellant's president Archie Radakovich located the fire on
24 exhibit R-1 in the area marked with an "X" and the initials "AR." On
25 the map the "X" is located 4-1/2 inches westerly of point "A" on Mt.

1 Solo Road and 1/4 inch south of appellant's south boundary line.
2 Using the scale of 1 inch equals 400 feet, the distance from Mt. Solo
3 Road figures out to be about 1800 feet or very close to 3/8 of a mile
4 as estimated by respondent's witnesses. The distance of the fire
5 south of appellant's south boundary line figures out to be only about
6 100 feet. Henry J. Morrison the neighbor who reported the fire to
7 appellant, located it at the same place as appellant.

8 The fire, as located by appellant and Mr. Morrison, was on the
9 property of International Paper Company and not on property of
10 appellant.

11 As shown on exhibit R-1 the slough winds and bends sinuously
12 through the property of appellant and International Paper Company
13 making it difficult for anyone not thoroughly familiar with the slough
14 to properly locate on a map a specific area on the ground. Under
15 these conditions, we believe it is likely that appellant and Mr.
16 Morrison, who were both familiar with the area, would be better able
17 than Mr. Tabor and Mr. Moore to properly locate the site of the fire
18 on the map. Credibility is lent to the general location indicated on
19 the map by appellant and Mr. Morrison, since it figures to be a
20 distance of about 1800 feet from Mt. Solo Road which comes very close
21 the the distance of 3/8 of a mile as estimated by Mr. Tabor and Mr.
22 Moore. On the other hand, the location on the map selected by Mr.
23 Tabor and Mr. Moore was only about 90 feet from the road, far short of
24 being 3/8 of a mile.

1 Archie Radakovich testified that the fire was located on property
2 belonging to International Paper Company, that he had no lease on the
3 property and exercised no control over it and that he only went on the
4 land as a public service to put the fire out. Exhibit R-1, shows that
5 land on which Mr. Radakovich and Mr. Morrison located the fire does
6 not belong to appellant.

7 VI

8 We find that the fire was located near the boundary line between
9 the property of appellant and the International Paper Company in the
10 general area indicated by the appellant and Mr. Morrison; but we are
11 not confident that they located it with such precision that we can
12 find as a fact that the fire was located south of appellant's south
13 boundary line and on the property of International Paper Company. We
14 do find, however, that respondent's evidence fell short of
15 establishing as a fact that the fire was located on property owned or
16 controlled by appellant.

17 Had photographs been taken of the fire, its location might well
18 have been established with reasonable certainty.

19 VI

20 Any Conclusion of Law which should be deemed a Finding of Fact is
21 hereby adopted as such.

22 From these Findings the Board comes to these

23 CONCLUSIONS OF LAW

24 I

25 This being a penalty case the burden of proof was on respondent.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 II

2 It was established by respondent that an open fire, containing
3 prohibited material was burning in the general vicinity of south Mt.
4 Solo solid waste site at 2361 East Lynnwood Drive, Longview,
5 Washington at about 2:30 p.m., on January 5, 1981, in violation of
6 Section 400-035; however, the evidence was insufficient to identify
7 the person or persons who started the fire.

8 III

9 The evidence was insufficient to establish that the appellant
10 owned or controlled the property on which the fire was located, so the
11 respondent failed to establish a prima facie case that appellant
12 caused or allowed the fire as provided by Section 400-035(4).

13 IV

14 Respondent failed to sustain the charge that appellant permitted
15 and maintained an open fire in violation of Section 400-035 of the
16 General Regulations for Air Pollution Sources.

17 V

18 Any Finding of Fact which should be deemed a Conclusion of Law is
19 hereby adopted as such.

20 From these Conclusions the Board enters this
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25

6 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

ORDER

The \$250 civil penalty for the violation of Section 400-035 of respondent's General Regulations for Air Pollution Sources is reversed.

DATED this 15th day of June, 1981.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


GAYLE ROTHROCK, Member

FINAL FINDINGS OF FACT,
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